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7590 TED R. RITTMASER FOLEY & LARDNER SUITE 3500 2029 CENTURY PARK EAST LOS ANGELES, CA 90067-3021			EXAMINER DESANTO, MATTHEW F	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/768,196
Filing Date: January 22, 2001
Appellant(s): LEBEL ET AL.

MAILED
JAN 29 2007
Group 3700

Ted R. Rittmaster
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 20, 2006 appealing from the Office action mailed April 20, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on July 20, 2006 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,630,710	Tune et al.	5-1997
5,904,708	Goedeke	5-1999
6,185,461	Er	2-2001
6,211,858	Moon et al.	4-2001
6,641,533	Causey, III et al.	11-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 6 - 10, and 12 – 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tune et al. USPN 5,630,710, and further in view of Goedeke (USPN 5,904,708) and Moon et al. (USPN 6,211,858).

Tune et al. discloses a medical system, comprising an ambulatory medical device (MD) [Ref. # 10] comprising MD electronic control circuitry (546) that further comprises at least one MD telemetry system (562, 564, 566) and at least one MD processor (542) that controls, at least in part, operation of the MD telemetry system and operation of the medical device, wherein the medical device is configured to provide a treatment to a body of a patient or to monitor a selected state of the body; and b) a communication device (CD) [Ref. # 952] comprising CD electronic control circuitry that further comprises at least one CD telemetry system and at least one CD processor that controls, at least in part, operation of the CD telemetry system and operation of the communication device, wherein the CD telemetry system sends messages to or receives messages from the MD telemetry system, wherein the medical device is comprises an infusion pump (10), and wherein the CD display device is controlled to show a plurality of infusion parameters simultaneously, and wherein a first portion of the MD telemetry system is incorporated into the MD processor and a second portion of the MD telemetry system is external to the MD processor, or wherein a first portion of the CD telemetry system is incorporated into the CD processor and a second portion of the CD telemetry system is external to the CD processor, wherein (1) the MD electronic control circuitry comprises at least one external MD functional module, other than the second portion of the MD telemetry system; that is external to the MD processor, (2) the

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CD electronic control circuitry comprises at least one external CD functional module, other than the second portion of the CD telemetry system, that is external to the CD processor, (3) the MD processor comprises an internal MD CPU and at least one other internal MD functional module, or (4) the CD processor comprises an internal CD CPU and at least one other internal CD functional module. (Figures 2,25-30,32-41, and entire reference).

Tune et al. also discloses the communication device with a CD display controlled by at least one CD processor for providing visual feedback to the patient, and wherein the feedback comprises a display of the quantity of a consumable estimated to be remaining in the system (512), wherein the consumable is a drug, and where the medical device wherein infusion parameters can be selected, and where the patient can program (28) there own options into the pump. (Column 3, lines 29-47), but fails to disclose wherein the telemetry device uses RF signals and the specific interactions that occur when using a cascading interface (or a first menu that can enable or disable patient programmable options at different time from the second menu).

Goedeke discloses the use of an implantable pump with telemetry components, wherein the telemetry used is RF telemetry that is well known in the medical device art.

Moon et al. discloses the working interface of a PDA and how this user interface is user-friendly and can be customize and personalized by using various screens and windows (Figures 3-6, Column 1, line 56-63 and Column 12-29).

At the time of the invention it would have been obvious for one of ordinary skill in the art to combine the disclosed invention of Tune et al. with the teachings of Goedeke

and Moon et al. because it is well known to use RF telemetry with implantable medical devices or any medical devices that communicate, through telemetry, as stated in the Goedeke (See Column 1, lines 40 to Column 2, line 6), therefore this would have been an obvious modification; with regards to changing the interface to a more user-friendly interface is a well known concept in the PDA, and computer art. One of ordinary skill would want to delete any unused or unwanted options on the screen since this "clogs" the screen, therefore it would have been obvious to incorporate the teachings of Moon et al. and the cascading interface to help make the screen more user friendly (Moon et al. Column 2, lines 29-53).

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tune et al. in view of Goedeke and further in view of Moon et al. as applied to the claims above, and further in view of Er (USPN 6185461).

Tune et al. in combination with Goedeke and Moon et al. disclosed the claimed invention except wherein the consumable is either (1) battery power remained in a replaceable CD battery in the communication device and a voltage level on the CD battery is graphically depicted with a desired resolution, or (2) battery power remaining in an MD battery in the medical device and a voltage level on the battery is graphically depicted with a desired resolution.

Er discloses a controlled system where the display, displays the battery data and battery longevity estimate graph (Figure 1 and 2 and entire reference).

At the time of the invention, it would have been obvious for a person with ordinary skill in the art to combine Tune et al. and Goedeke medical infusion device with Er replacement time indicator device and display, because according to Er, it is highly desirable to predict when a battery will failure so as to make arrangements for the replacement battery. (Column 2, lines 1-9).

5. Claims 6-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Causey, III et al. (USPN 6,641,533) in view of Moon et al. (USPN 6,211,858).

Causey, III et al. discloses a MD electronic control circuitry, that further comprises at least one MD telemetry system, and at least one MD processor that controls, at least in part, operation of the MD telemetry system and operation of the medical device, wherein the medical device is configured to provide a treatment to a body of a patient or to monitor a selected state of the body; and b) a communication device (CD) [10] comprising CD electronic control circuitry that further comprises at least one CD telemetry system and at least one CD processor that controls, at least in part, operation of the CD telemetry system and operation of the communication device, wherein the CD telemetry system sends messages to or receives messages from the MD telemetry system (Figures 2, 5, 7, 22, 24 and entire reference), but fails to disclose a display screen that displays the drug estimated to be remaining in a reservoir, the batter power remaining, the time-of-day indicator and finally the battery indicator.

Moon et al. discloses the working interface of a PDA and how this user interface is user-friendly and can be customize and personalized by using various screens and windows (Figures 3-6, Column 1, line 56-63 and Column 12-29).

At the time of the invention it would have been obvious for one of ordinary skill in the art to combine the disclosed invention of Causey, III et al. with the teachings of Moon et al. because this would have been an obvious modification to make a more user friendly interface. Therefore one of ordinary skill would want to incorporate this concept of deleting any unused or unwanted options on the screen into the PDA of Causey et al. since the unused options "clog" the screen, therefore it would have been obvious to incorporate the teachings of Moon et al. and the cascading interface to help make the screen more user friendly (Moon et al. Column 2, lines 29-53). The examiner would like to note, that it would be an obvious modification to one of ordinary skill in the art to modify the disclosed invention of Causey, III et al. to include these display options because it is well known in the medical field and pump art to incorporate these options when dealing with a display on a pump and/or remote device controlling the pump to make the overall operating procedure by the patient or medical personnel easier. (This can be seen in the other references used in this office action [Tune et al., Goedeke, and Er]) since the concept of enabling and disabling is being taught by the Moon et al. reference it would only take routine skill in the software industry to have a PDA include medical device options.

(10) Response to Argument

Tune et al. discloses a medical infusion system that has a programmer with a user interface (Column 2, line 60), which allows for entering programmed commands and to allow for the creation or editing of a delivery program. Tune et al further explains the possibility of picking a specific parameter and changing the parameter if possible (Column 3, line 39-49). In column 22, line 57 and column 23, Tune et al. discloses the different types of delivery profiles and how each profile is different. In Column 24, line 25 to line 40 discusses the user to go from a mode status screen to a setup screen as well as cancelling the set-up screen by pressing the cancel key (see Column 29, line 51-63). Tune et al. discloses the use of different screens but never specifically discloses the no longer displaying the option on the first menu. For this reason the examiner uses the Moon et al. reference, to show the advantage and motivation to having a more user friendly display and to show the level of skill in the display art when dealing with the adding and removing of icons or options.

Moon et al. discloses in Column 2, line 29-46, a touch display that displays meters or small applications that can rotate from one screen (a first menu) to another screen (second menu). This type of user interface is advantageous due to the same size of the personal business communicator (as well as the medical device programmer) [line 36-39]. The screen displays are edited by the user as described in column 7, line 11-28 & column 8, line 36-45, which allow the user to remove or add certain "meters" to a specific screen, thus changing the screen to display or not display

a certain option. Moon et al. further shows support for this type of user interface because of the size of the screen and the status bar (Column7, line 55-60).

Causey, III et al. discloses a communication device (CD) display throughout the reference. The CD display is the remote programmer or the PDA as mention in the abstract, the summary of the invention and the first three lines of the detailed description of the preferred embodiments. Causey, III et al. discloses in column 2, lines 40 a display that is a touch screen interface, that communicates with a medical device. Causey, III et al. discloses several embodiments that teach a CD display that is used on the communication device, and in column 20, line 3-22, there are many options that are capable of being shown on the display. Causey, III et al. discloses that a PDA can be used to communicate with the medical device (1010 or 2100), but Causey, III et al. fails to specific teach the disablement of an option that was on a first menu. Once again, this is the reason, why the examiner made a 103 Rejection in view of Moon et al., since both references use a PDA user interface and the reasons supplied by Moon et al. for motivation to combine the two references.

With regards to the arguments made in view of Tune et al. USPN 5,630,710, and further in view of Goedeke (USPN 5,904,708) and Moon et al. (USPN 6,211,858), the examiner disagrees because with the interpretation of Moon et al. Moon et al. teaches the use of a second menu to control the "meters" that are displayed on the first menu, therefore enabling or disabling the option as well as not displaying the disabled the option from the first screen. This was taught by removing the meter from the scroll bar and by changing the meters that are displayed in the meter panel or player box (Column

7, line 61 – Column 8, line 45). The motivation to combine these references because of the desirability to keep the display small and have enough room to show all the information that is required by each meter (Moon et al. column 2, line 36-40).

With regards to Causey, III et al. (USPN 6,641,533) in view of Moon et al. (USPN 6,211,858), the examiner disagrees with the interpretation of Moon et al. Moon et al. teaches the use of a second menu to control the “meters” that are displayed on the first menu, therefore enabling or disabling the option(s) as well as not displaying the disabled the option(s) from the first screen. This was taught by removing the meter from the scroll bar and by changing the meters that are displayed in the meter panel or player box (Column 7, line 61 – Column 8, line 45). The motivation to combine these references comes from the desirability to keep the display small and have enough room to show all the information that is required by each meter (Moon et al. column 2, line 36-40).

With regards to the lack of teaching of a patient programmable option, the examiner’s interpretation is that one of ordinary skill in the art would simply modify the prior art (Tune et al. or Causey, III et al.) to have the cascading user interface with medical options available instead of the basic computer options (because of the level of skill in the graphic user interface and medical device art). Tune et al. and Causey, III et al. both teach several options that are displayed on the communication device that are created, edited or removed, thus showing a user interface with different options on different menus, but fail to explicitly teach the use of a second menu controlling the options of the first menu. By implemented the user interface of Moon et al., this

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resolves that outstanding issue, because Moon et al. teaches a second menu controlling the display of the first menu. Once the graphic interface of Moon et al. is implemented with the basic programming of Tune et al. and Causey et al. III, applicant's invention would be anticipated. One of ordinary skill in the graphic user interface would be able create menus that would incorporate the working options of the prior art (Tune et al. and Causey, III et al.) since the working options are controlled by the user (for example an option of an alarm or a delivery pattern). Once the advantage of the cascading interface is implied it would only take routine skill in the art to modify the visual titles that are being displayed and thus anticipate the invention since the options that are displayed are taught in both references and are enabled or disabled in the both prior art references (Tune et al. and Causey, III et al.).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Matthew DeSanto

Matthew DeSanto

1/16/07

[Signature]

Conferees:

Nick Lucchesi

[Signature]

Angela D. Sykes
Angela Sykes